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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,347	04/02/2004	Jerry K. Matson	P-1652-041	3300
7590 Floyd E. Ivey Liebler, Ivey, Connor & Berry P.O. Box 6125 Kennewick, WA 99336			EXAMINER SMITH, MATTHEW J	
			ART UNIT 3635	PAPER NUMBER
			MAIL DATE 12/13/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/817,347	Applicant(s) MATSON, JERRY K.	
	Examiner Matthew J. Smith	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Independent claims 1 and 6 are recite "heat tape ... or fluid heat transfer system means" which is considered indefinite. As written, these types of heating means are not functional equivalents but separate and distinct devices and thus do not define the invention.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen (5353564) in view of Davis (3766644) and Graham (4439666).

Hansen discloses a method and apparatus for using heat (col. 4, lines 34-49) to reduce condensate in a building interior having a ceiling 64 with an apex and a width from the ceiling apex to a wall 64; the interior wall surface having a height from a

building foundation to the ceiling and but not heating with an embedded wire, temperature control, or moisture control.

Davis presents an insulating board 16 having a first top surface and an exterior surface; the exterior surface facing a building interior; serpentine heating tape 14 in thermal communication with and fixed to the top surface; the top surface fixed by staples (Fig. 2) to a ceiling; the insulating board having a width which is less than the ceiling width; the insulating board having a height which is equal to the wall height; power connected by power interconnection 28 to operate the heater; a second insulating board 18 having a bottom surface and a top surface; the exterior surface moisture resistant (col. 4, line 7); the first top surface fixed to the bottom surface of 18; the second top surface fixed to a ceiling; the heater having a period and an amplitude of a width less than the ceiling width and the interior wall; rigid insulation board, via strips 22, 24; the first top surface fixed flush against the bottom surface such as to minimize space between the first top surface and the bottom surface; and adding insulation (col. 3, line 24) intermediate the insulating board and the interior ceiling surface.

Graham shows temperature control 54 to control electrical power 42 for temperature control of both a heater 10 and a temperature sensor 60 embedded in a panel and the temperature control in communication with the power.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to reduce condensation in the Hansen building utilizing the Davis heating panel, modified by Graham, in order to provide uniform heating as stated in Davis (col. 1, line 47) and Graham (col. 4, lines 55-56) and thus control of condensation.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen in view of Davis and Graham as applied to claim 8 above, and further in view of Kolakowski et al. (4272673).

The combination discloses the invention substantially as claimed but not providing insulation board of rigid polyisocyanurate.

Kolakowski et al. describe insulation including a polyisocyanurate insulation board (col. 4, lines 60-65).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to use a polyisocyanurate insulation board, as described by Kolakowski et al., in order to strengthen the panel.

### ***Response to Arguments***

Applicant's arguments filed 29 October 2007 have been fully considered but they are not persuasive. As set forth above, Hanson discloses the basic concept of removing condensate. Modification of structure to facilitate heating a surface to reduce condensate is within the scope of one of ordinary skill. The precise structure to reduce condensate is not limited to forced hot air. The examiner contends the Davis structure is capable of maintaining an interior surface at any temperature, such as 0.5 degrees higher than the surrounding air, considering the contribution of Graham. Further, the examiner notes the claims do not recite any limitation of the interior surface temperature relative to the building air temperature. While applicant does not mention Graham, the

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examiner believes the reference further shows it is well known to control temperature and moisture (Graham, col. 10, lines 42-52), and thus condensate, with a heated panel.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Smith whose telephone number is 571-272-7034. The examiner can normally be reached on T-F, 8-3.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Richard E. Chilcot  
Supervisory Patent Examiner  
Art Unit 3635

MJS *MJS*  
4 December 2007

Robert Canfield  
Primary Examiner

